

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

TELLER. an individual,

Plaintiff(s),

v.

GERARD DOGGE (p/k/a Gerard Bakardy), an  
individual,

Defendant(s).

Case No. 2:12-CV-591 JCM (GWF)

ORDER

Presently before the court is plaintiff Teller's motions for default judgment (doc. #228) and permanent injunction (doc. #229) against *pro se* defendant Dogge. Defendant filed a response (doc. # 230), and plaintiff filed a reply (doc. # 231).

**I. Background**

The instant action is a suit by plaintiff, a world-renowned magician, against defendant, a Dutch performer who created two YouTube videos in which he performed a magic trick strikingly similar to one of plaintiff's signature illusions, and offered to sell "A Double illusion for the price of 'One'!!" (*See* doc. # 1). Defendant also marketed for sale a rose flower prop of his own design.

The illusion, "Shadows," has been an integral part of Teller's act for over three decades.<sup>1</sup> Defendant's similar illusion is called "The Rose and Her Shadow." To allow individuals to

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<sup>1</sup> "Shadows" consists of a spotlight trained on a vase containing a single rose. The light falls in such a manner that the shadow of the rose is projected onto a white screen positioned some distance behind it. Teller then enters the otherwise still scene, picks up a large knife, and proceeds to use the knife to dramatically sever the leaves and petals of the rose's shadow on the screen slowly, one-by-one, whereupon the corresponding leaves of the real rose sitting in the vase fall to the ground, breaking from the stem at the point where Teller cut the shadow.



1 locate his videos using YouTube's search functions, defendant tagged the videos with keywords  
2 including "Penn" and "Teller."<sup>2</sup>

3 Plaintiff brought claims for copyright infringement under the Copyright Act and unfair  
4 competition under the Lanham Act. (*See* doc. # 1). The case has persisted for more than two  
5 years, due in part to defendant's refusal to cooperate in the litigation process and failure to  
6 comply with court orders.

7 On March 20, 2014, this court granted Teller's motion for summary judgment on the  
8 issue of liability for copyright infringement. (Doc. # 184). Construing defendant's *pro se*  
9 arguments liberally, the court held, however, that defendant Dogge raised a genuine issue of fact  
10 as to whether he willfully infringed upon Teller's copyright. (*See id.*). Therefore, the court  
11 denied summary judgment on the issue of damages for copyright infringement. (*See id.*) The  
12 court also denied summary judgment on Teller's unfair competition claim. (*See id.*).

13 On July 9, 2014, the court adopted the magistrate judge's report and recommendation to  
14 impose sanctions under Federal Rules of Civil Procedure 16 and 37 on defendant for failing to  
15 participate in required pretrial procedures and refusing to physically attend trial. (*See* doc. #  
16 225). Plaintiff now seeks default judgment on his willful infringement and unfair competition  
17 claims against defendant. Plaintiff also seeks permanent injunctive relief and attorneys' fees and  
18 costs.

## 19 **II. Discussion**

### 20 *A. Default Judgment*

21 Default judgment is appropriate "when a party against whom a judgment for affirmative  
22 relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or  
23 otherwise. . ." Fed. R. Civ. P. 55(a). Federal Rule of Civil Procedure 55(b)(2) provides that "a  
24 court may enter a default judgment after the party seeking default applies to the clerk of the court  
25 as required by subsection (a) of this rule." Fed.R.Civ.P. 55(b)(2).

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28 <sup>2</sup> Teller is one-half of the famous Penn & Teller magic duo. Teller performs primarily  
with Penn Jillette.



1 Obtaining a default judgment entails two steps: “first, the party seeking a default  
 2 judgment must file a motion for entry of default with the clerk of a district court by  
 3 demonstrating that the opposing party has failed to answer or otherwise respond to the  
 4 complaint, and, second, once the clerk has entered a default, the moving party may then seek  
 5 entry of a default judgment against the defaulting party.” *See UMG Recordings, Inc. v. Stewart*,  
 6 461 F. Supp. 2d 837, 840 (S.D. Ill. 2006). Where a party has not been properly served, there is  
 7 no basis for a court to enter default judgment. *See Fairly v. Potter*, 2003 WL 402261, \*4 (N.D.  
 8 Cal. 2003).

9 Plaintiff has properly complied with Rule 55. (*See docs. # 226, 228*). Plaintiff now asks  
 10 the court to enter default judgment against defendant under Federal Rule of Civil Procedure  
 11 55(b)(2).

12 The choice whether to enter a default judgment lies within the discretion of the trial court.  
 13 *Aldabe v. Aldabe*, 616 F.3d 1089, 1092 (9th Cir. 1980). In the determination of whether to grant  
 14 a default judgment, the trial court should consider the seven factors articulated in *Eitel v.*  
 15 *McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). These factors are: (1) the possibility of  
 16 prejudice to plaintiff, (2) the merits of the claims, (3) the sufficiency of the complaint, (4) the  
 17 amount of money at stake, (5) the possibility of a dispute concerning material facts, (6) whether  
 18 default was due to excusable neglect, and (7) the policy favoring a decision on the merits. *Id.* In  
 19 applying these *Eitel* factors, “factual allegations of the complaint, except those relating to the  
 20 amount of damages, will be taken as true.” *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th  
 21 Cir. 1977); *see Fed. R. Civ. P. 8(d)*.

22 The first *Eitel* factor weighs in favor of granting plaintiff’s motion for default judgment.  
 23 Plaintiff will be prejudiced because he will not be allowed to litigate his claims. *See Adobe Sys.*  
 24 *Inc. v. Marmeleitos*, 2009 WL 1034143 at \*3 (N.D. Cal. Apr. 16, 2009). Defendant’s response  
 25 cites no legal authority. The majority of defendant’s “legal argument” is dedicated to soliloquys  
 26 on issues irrelevant to the case, such as how the United States court system is inferior to the  
 27 system in his native country. Defendant shows no respect for this court and no intention of  
 28 attending trial, complying with any court orders, or cooperating in any way to help resolve the



1 case. Therefore, if plaintiff's motion for default judgment is not granted, plaintiff "will likely be  
2 without other recourse for recovery." *PepsiCo, Inc. v. Cal. Security Cans*, 283 F.Supp.2d 1127,  
3 1177 (C.D. Cal. 2002).

4 The second and third *Eitel* factors weigh in favor of default judgment. Plaintiff's  
5 complaint states plausible claims for relief for willful copyright infringement and unfair  
6 competition. (*See* doc. # 1). Further, plaintiff's complaint is well pleaded as it identifies  
7 defendant, enumerates plaintiff's rights under the Lanham and Copyright Acts, describes the  
8 steps defendant took to infringe upon these rights, and sets forth causes of action for defendant's  
9 conduct. (*See id.*)

10 Under the fourth *Eitel* factor, the court considers the amount of money at stake in relation  
11 to the seriousness of defendant's conduct. *See Cal. Security Cans*, 238 F. Supp. 2d at 1176.  
12 "This requires that the court assess whether the recovery sought is proportional to the harm  
13 caused by defendant's conduct." *Trs. of Plumbers & Pipefitters Union Local 525 Health &*  
14 *Welfare Trust & Plan v. T.E.N. Mech. Corp.*, No. 2:10-cv-02258-RLH-NJK, 2013 WL 1249600  
15 (D. Nev. March 27, 2013) (quoting *Landstar Ranger, Inc. v. Parth Enter., Inc.*, 725 F. Supp. 2d  
16 916, 921 (N.D. Cal. 2010)). The sum of money sought is large: more than \$1.1 million.<sup>3</sup> (*See*  
17 doc. # 228). The relief sought is appropriate under 17 U.S.C. §§ 504-05<sup>4</sup> and 15 U.S.C § 1117<sup>5</sup>  
18 and the amount is commensurate with the seriousness of defendant's deliberate misconduct.  
19 Because plaintiff demonstrates a basis for his requested monetary relief, this factor weighs in  
20 favor of granting default judgment.

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23 <sup>3</sup> Plaintiff seeks \$150,000 statutory damages for willful copyright infringement,  
24 \$931,661.65 in attorneys' fees, and \$57,906.95 for costs, totaling \$1,139,568.60.

25 <sup>4</sup> "In a case where the copyright owner sustains the burden of proving, and the court  
26 finds, that infringement was committed willfully, the court in its discretion may increase the  
27 award of statutory damages to a sum of not more than \$150,000." 17 U.S.C. § 504(c)(2). "In any  
civil action under this title, the court in its discretion may allow the recovery of full costs . . . the  
court may also award a reasonable attorney's fee to the prevailing party as part of the costs." 17  
U.S.C. § 505.

28 <sup>5</sup> "The court in exceptional cases may award reasonable attorney fees to the prevailing  
party." 15 U.S.C. § 1117(a)(3).



1           The fifth *Eitel* factor also favors default judgment. “Once the court clerk enters a default,  
2   the well-pleaded factual allegations of the complaint are taken as true, except for those  
3   allegations relating to damages.” *Geddes*, 559 F.2d at 560. Given the sufficiency of the  
4   complaint, including evidence of plaintiff’s copyright registration, known celebrity persona,  
5   defendant’s willful infringement, and defendant’s default, “no genuine dispute of material facts  
6   would preclude granting [plaintiff’s] motion.” *Cal. Security Cans*, 238 F. Supp. 2d at 1177.

7           Applying the sixth factor, the court cannot conclude that defendant’s default is due to  
8   excusable neglect. Despite defendant’s best efforts to avoid service of process, which  
9   necessitated plaintiff’s filing of an emergency motion to extend time for service, and a motion  
10   for service by publication, plaintiff properly served defendant with summons and the complaint.  
11   Defendant’s efforts to evade service, and failures to respond, to appear in person, and to litigate  
12   this case cannot be attributable to excusable neglect. *United States v. High Country Broad. Co.,*  
13   *Inc.*, 3 F.3d 1244, 1245 (9th Cir. 1993) (holding that it was “perfectly appropriate” for the district  
14   court to enter default judgment against a corporation that failed to appear in the action through  
15   licensed counsel). This factor weighs in favor of default judgment.

16           The final *Eitel* factor weighs against default judgment. “Cases should be decided upon  
17   their merits whenever reasonably possible.” *Eitel*, 782 F.2d at 1472. But the mere existence of  
18   Rule 55(b) “indicates that this preference, standing alone, is not dispositive.” *Cal. Sec. Cans*,  
19   238 F. Supp. at 1177 (citation omitted). Moreover, defendant’s failure to comply with court  
20   orders or appear in court “makes a decision on the merits impractical, if not impossible.” *Id.*

21           Having reviewed plaintiff’s motion, evidence previously submitted in this case, and  
22   having considered the *Eitel* factors as a whole, the court concludes that the entry of default  
23   judgment is appropriate against defendant. The court now turns to the reasonableness of the  
24   damages and relief sought in the default judgment.

#### 25           B. Statutory Damages

26           Plaintiff seeks statutory damages in the amount of \$150,000 for plaintiff’s prevailing  
27   Copyright Act claims. A copyright owner “may elect, at any time before final judgment is  
28   rendered, to recover, instead of actual damages and profits, an award of statutory damages for all



1 infringements involved in the action.” 17 U.S.C. § 504(c)(1). Where the copyright owner  
 2 sustains the burden of proving, and the court finds, that infringement was committed willfully,  
 3 the court has discretion to increase the award of statutory damages to a sum up to \$150,000. *Id.*  
 4 at § 504(c)(2).

5 “The court has wide discretion in determining the amount of statutory damages to be  
 6 awarded, constrained only by the specified maxima and minima.” *Peer Int’l Corp. v. Pausa*  
 7 *Records, Inc.*, 909 F.2d 1332, 1336 (9th Cir. 1990) (quoting *Harris v. Emus Records Corp.*, 734  
 8 F.2d 1329, 1335 (9th Cir. 1984)). “Even for uninjurious and unprofitable invasions of copyright  
 9 the court may, if it deems it just, impose a liability within [the] statutory limits to sanction and  
 10 vindicate the statutory policy” of discouraging infringement. *F. W. Woolworth Co. v.*  
 11 *Contemporary Arts*, [344 U.S. 228, 233](#) (1952); *see also Peer Int’l*, 909 F.2d at 1337.

12 Plaintiff elected statutory damages before succeeding on the merits through defendant’s  
 13 default. Therefore, this court has wide discretion to award statutory damages, in any amount,  
 14 from \$750 to \$150,000. *See* 17 U.S.C. § 504. Because plaintiff also seeks a permanent  
 15 injunction, the court finds the maximum statutory award unnecessary to deter defendant’s further  
 16 violations.

17 Further, plaintiff’s initiation of this case stemmed from two YouTube videos defendant  
 18 posted with an offer to sell “A Double illusion for the price of ‘One’!!” Plaintiff’s own exhibits  
 19 show screenshots which appear to be one video at three different times. (*See* doc. #1, exh. 3).  
 20 The video has between twelve and fourteen views, a very small amount. It is unclear whether  
 21 defendant sold any of the offered illusions. Because this court may award damages “[e]ven for  
 22 uninjurious and unprofitable invasions of copyright,” *Woolworth*, 344 U.S. at 233, the court finds  
 23 damages in the amount of \$15,000 appropriate.

#### 24 *C. Injunctive Relief*

25 Plaintiff contends that a permanent injunction is necessary to stop defendant from his  
 26 continued violation of plaintiff’s trademarks and copyrights. Plaintiff seeks a permanent  
 27 injunction prohibiting defendant from selling his flower prop and forbids defendant from trading  
 28 on Teller’s goodwill to sell any goods or services in the future, including reproducing any of



1 Penn & Teller’s illusions. Specifically, plaintiff requests the court enter an injunction enjoining  
 2 defendant and any of his alter egos, agents, employees, or other representatives from:

- 3 1. Infringing Teller’s copyright in “Shadows,” and from producing,  
 4 manufacturing, selling, or otherwise distributing the rose flower prop;
- 5 2. Trading on Teller’s goodwill and reputation to provide Dogge’s profits in the  
 6 future. Teller performs primarily with Penn & Teller; accordingly this includes  
 7 building, using or selling props to allow Dogge or others to perform any [sic]  
 8 Penn & Teller’s illusions, or assisting others in doing the same.
- 9 3. Using in commerce any word, term, name, symbol, or device, or any  
 10 combination thereof, or any false designation of origin, false or misleading  
 11 description of fact, or false or misleading representation of fact that is likely to  
 12 cause confusion, to cause mistake or to deceive regarding the origin,  
 13 sponsorship, or approval of Dogge’s goods and services or falsely to imply a  
 14 connection, affiliation, endorsement, or association with Teller or Penn &  
 15 Teller;
- 16 4. Unfairly competing with Teller or Penn & Teller in any manner whatsoever;  
 17 and
- 18 5. Causing likelihood of confusion or further injuring Teller’s business reputation.  
 19 (Doc. # 228).

20 Both the Copyright Act and the Lanham Act vest district courts with power to grant  
 21 permanent injunctions as they “deem reasonable.” 17 U.S.C. § 502(a) (“Any court having  
 22 jurisdiction of a civil action arising under this title may . . . grant temporary and final injunctions  
 23 on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.”); 15  
 24 U.S.C § 1116(a) (“[C]ourts vested with jurisdiction of civil actions arising under this chapter  
 25 shall have power to grant injunctions, according to the principles of equity and upon such terms  
 26 as the court may deem reasonable . . .”).

27 . . .

28 . . .



1 A permanent injunction is warranted when there is no reason to believe the infringing  
 2 party will cease the infringement without an injunction. *See, e.g., Broadcast Music, Inc. v.*  
 3 *Blueberry Hill Family Restaurants, Inc.*, 899 F. Supp. 474, 483 (D. Nev. 1995) (Copyright Act)  
 4 (citing *Tempo Music v. Christenson Food & Mercantile Co.*, 806 F. Supp. 816, 821 (D. Minn.  
 5 1992)) (same); *Superhype Publishing, Inc. v. Vasiliou*, 838 F. Supp. 1220, 1226 (S.D. Ohio  
 6 1993)) (same); *Storz Performance, Inc. v. Moto Italia*, No. 07-cv-2242 W(WMC), 2008 WL  
 7 4284402, at \*4 (S.D. Cal. Sept. 15, 2008) (Lanham Act); *Sprint Nextel Corp. v. Thuc Ngo*, No.  
 8 C-12-02764 CW (EDL), 2012 WL 4127296, at \*8 (N.D. Cal. Sept. 18, 2012) (same). Generally,  
 9 a permanent injunction will be granted when liability has been established and there is a threat of  
 10 continuing violations. *See MAI Systems Corp v. Peak Computer, Inc.*, 991 F.2d 511, 520 (9th  
 11 Cir. 1993); *Storz*, 2008 WL 4284402, at \*8.

12 Courts must consider the following factors in determining whether to issue a permanent  
 13 injunction: (1) likelihood of irreparable injury if preliminary relief is not granted; (2) a likelihood  
 14 of success on the merits; (3) balance of hardships; and (4) advancement of the public interest.  
 15 *Winter v. N.R.D.C.*, 555 U.S. 7, 20 (2008). “An injunction is a matter of equitable discretion”  
 16 and is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff  
 17 is entitled to such relief.” *Id.* at 22, 32. A moving party is required to make a showing that all of  
 18 these requirements have been met. *Am. Trucking Ass’n v. City of Los Angeles*, 559 F.3d 1046,  
 19 1052 (9th Cir. 2009).

20 Plaintiff has achieved success on the merits for his copyright infringement claim through  
 21 this court’s prior order of summary judgment (doc. # 184),<sup>6</sup> and for his unfair competition claim  
 22 through defendant’s default. Further, plaintiff is likely to suffer irreparable injury because,  
 23 absent injunctive relief, defendant’s trademark and copyright infringement is likely to continue.  
 24 Consumer confusion and potential dissatisfaction with defendant’s recreations of plaintiff’s  
 25 performances are likely to have a negative effect on plaintiff’s reputation and goodwill. *See*

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 28 <sup>6</sup> This court’s March 20, 2014 order granted summary judgment as to all issues of  
 copyright infringement, except willful infringement. (*See* doc. # 184). Willful infringement has  
 now been established by defendant’s default.



1 *Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir.  
2 1991) (“intangible injuries, such as damage to . . . goodwill, qualify as irreparable harm”).

3  
4 Balance of hardships and public interest both weigh in favor of plaintiff. Plaintiff has  
5 expended a substantial amount of time and money in building and promoting performances and a  
6 public persona (copyright and trademark, respectively) that are recognizable and respected  
7 worldwide. Any harm to defendant in forcing him to comply with the requirements of the law is  
8 outweighed by plaintiff’s efforts to protect his copyrighted performances and trademarked  
9 persona from consumer confusion.

10 After considering the *Winter* factors, the court finds that a permanent injunction is  
11 appropriate to enjoin defendant from any further infringement.

12  
13 Plaintiff asserts that, in addition to preventing defendant from infringing on plaintiff’s  
14 copyright and trademark, defendant should be enjoined from producing, manufacturing, selling,  
15 or otherwise distributing defendant’s rose flower prop. (*See* doc. # 228). Plaintiff further asserts  
16 that purchasers of the prop would be more likely to perform plaintiff’s famous illusion with the  
17 prop than create a new illusion. Additionally, the sale of the prop would cause plaintiff to have  
18 to continue to bring enforcement actions and engage in a high degree of monitoring, since sale of  
19 the prop would also make it much more likely that others would be doing the illusion, causing  
20 further harm to plaintiff. (*See id.*).

21 That purchasers of defendant’s prop *might* perform plaintiff’s illusion in an infringing  
22 manner, requiring plaintiff to bring future enforcement actions against additional defendants is  
23 not a concern for this court. Injunctions must be narrowly tailored to remedy only the specific  
24 harms shown by a plaintiff, rather than to enjoin all possible breaches of the law. *See Price v.*  
25 *City of Stockton*, 390 F.3d 1105, 1117 (9th Cir.2004); *Craigslist, Inc. v. Naturemarket, Inc.*, 694  
26 F. Supp. 2d 1039, 1062 (N.D. Cal. 2010); *Iconix, Inc. v. Tokuda*, 457 F. Supp. 2d 969, 998 (N.D.  
27 Cal. 2006). Therefore, though the court finds it appropriate to enjoin defendant, his alter egos,  
28 agents, employees, and other representatives from infringing on plaintiff’s copyright and



1 trademark, this court declines to prevent defendant from producing, manufacturing, selling, or  
 2 otherwise distributing the rose flower prop.

3 *D. Attorneys' fees and costs*

4 *1. Lanham Act claims*

5 The Lanham Act allows a court to award reasonable attorneys' fees to the prevailing  
 6 party in "exceptional cases." *See* 15 U.S.C. § 1117(a); *Gracie v. Gracie*, 217 F.3d 1060, 1068  
 7 (9th Cir. 2000). Although the statute does not define the term "exceptional," generally a  
 8 trademark case is exceptional when the court finds the defendant acted maliciously, fraudulently,  
 9 deliberately, or willfully. *Earthquake Sound Corp. v. Bumper Indus.*, 352 F.3d 1210, 1216 (9th  
 10 Cir. 2003); *Rio Properties, Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1023 (9th Cir. 2002)  
 11 (district court determined by entry of default judgment that defendant's act were committed  
 12 knowingly, maliciously, and oppressively, and with an intent to injure).

13 Here, the complaint alleges that defendant's work "The Rose & Her Shadow" is  
 14 intentionally similar to plaintiff's "Shadows" and is likely to cause confusion. (*See* doc. # 1).  
 15 Because the court must accept the allegations in the complaint as true, defendant deliberately and  
 16 knowingly committed acts of trademark infringement. Therefore, finding that this is an  
 17 "exceptional" case under 15 U.S.C. § 1117(a), an award of attorneys' fees is justified.

18 In addition to reasonable attorneys' fees, the Lanham Act also entitles plaintiffs to an  
 19 award of costs. *See* 15 U.S.C. § 1117(a) ("When a violation of any right of the registrant of a  
 20 mark registered in the Patent and Trademark Office [or] a violation under section 1125(a) or (d) .  
 21 . . shall have been established in any civil action arising under this chapter, the plaintiff shall be  
 22 entitled . . . to recover (3) the costs of the action."). Because defendant has engaged in unfair  
 23 competition, violating 15 U.S.C. 1125(a) by suggesting plaintiff's endorsement of and  
 24 connection to defendant's "The Rose & Her Shadow," plaintiff is entitled to recover the costs of  
 25 this action. *See* 18 U.S.C. § 1125(a); *White v. Samsung Electronics Am., Inc.*, 971 F.2d 1395,  
 26 1399-1400 (9th Cir. 1992) (interpreting § 1125(a) to create a cause of action against individuals  
 27 who use distinctive elements of a celebrity's persona without permission to falsely suggest an  
 28 association or endorsement of goods or services).



1                                   2. *Copyright Act claims*

2                   Under the Copyright Act, “the court in its discretion may allow the recovery of full costs .  
3 . . . [T]he court may also award a reasonable attorney’s fee to the prevailing party as part of the  
4 costs.” 17 U.S.C. § 505.

5                   Because the court granted summary judgment in favor of plaintiff’s copyright  
6 infringement claims, plaintiff is a prevailing party. Therefore, the court may award reasonable  
7 attorneys’ fees and full costs.

8                                   3. *Court’s award*

9                   In the Ninth Circuit, the starting point for determining reasonable fees is the calculation  
10 of the “lodestar,” which is obtained by multiplying the number of hours reasonably expended on  
11 litigation by a reasonable hourly rate. *See Jordan v. Multnomah Cnty.*, 815 F.2d 1258, 1262 (9th  
12 Cir. 1987). “The ‘lodestar’ is calculated by multiplying the number of hours the prevailing party  
13 reasonably expended on the litigation by a reasonable hourly rate.” *Camacho v. Bridgeport*  
14 *Financial, Inc.*, 523 F.3d 973, 978 (9th Cir. 2008) (internal quotations and citation omitted).

15                   In calculating the lodestar, the court must determine a reasonable rate and a reasonable  
16 number of hours for each attorney. *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th  
17 Cir. 1986), *reh’g denied, amended on other grounds*, 808 F.2d 1373 (9th Cir. 1987). The  
18 lodestar is deemed to be presumptively reasonable, though the district court has the discretion to  
19 consider and upward or downward adjustment.

20                   Plaintiff seeks \$57,906.95 in costs and \$931,661.65 in attorneys’ fees, totaling  
21 \$989,568.60. Plaintiff’s counsel has provided the court with an affidavit showing counsel’s  
22 billing practices and costs incurred.

23                   Having reviewed counsel’s affidavit, computed each attorney’s hourly rate, and having  
24 considered the time spent on each task outlined in exhibit A, the court finds the amount of hours  
25 expended and the billable rates used to be reasonable. Further, the court finds the costs expended  
26 by plaintiff to be reasonable.



1 While this court finds that plaintiff is entitled to costs and attorneys' fees, the requested  
2 amount—\$57,906.95 in costs and \$931,661.65 in attorneys' fees, totaling \$989,568.60—is  
3 significant. Plaintiff initiated this case based on defendant's posting of two infringing YouTube  
4 videos that received minimal views, both of which were removed by YouTube in respect for  
5 plaintiff's copyright. It is unclear whether defendant sold any of the offered illusions or made  
6 any profit at all from the videos.

7 There is no denying that defendant has been exceptionally difficult and unresponsive,  
8 necessitating numerous motions and responses from plaintiff to attempt to compel defendant's  
9 compliance and cooperation. For the additional time and effort plaintiff undertook in an attempt  
10 to achieve defendant's cooperation in the litigation process, the court finds plaintiff entitled to  
11 reasonable costs in the amount of \$30,000, and attorney fees in the amount of \$500,000, for a  
12 total award of \$530,000.

### 13 **III. Conclusion**

14 Accordingly,

15 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff Teller's  
16 motion for default judgment against defendant Dogge (doc. # 228) be GRANTED.

17 IT IS FURTHER ORDERED that plaintiff Teller's motion for statutory damages (doc. #  
18 228) be GRANTED in the amount of \$15,000.

19 IT IS FURTHER ORDERED that plaintiff Teller's motion for a permanent injunction  
20 against defendant Dogge (doc. # 229) be GRANTED, consistent with the below order, and  
21 DENIED as to restricting defendant Dogge from building, producing, manufacturing, selling, or  
22 otherwise distributing the rose flower prop or any other props that might allow others to infringe  
23 on Teller's or the duo of Penn & Teller's performance copyrights.

24 IT IS FURTHER ORDERED that plaintiff Teller's motion for attorneys' fees and costs  
25 against defendant Dogge (doc. # 228) be GRANTED in the amount of \$30,000 for costs and  
26 \$500,000 for attorneys' fees, totaling \$530,000.



1 IT IS FURTHER ORDERED that defendant Dogge and any of his alter egos, agents,  
2 employees, or other representatives are permanently enjoined from:

- 3 1. Infringing Teller's copyright in "Shadows";  
4 2. Trading on Teller's goodwill and reputation to provide Dogge's profits in the future.  
5 3. Using in commerce any word, term, name, symbol, or device, or any combination  
6 thereof, or any false designation of origin, false or misleading description of fact, or  
7 false or misleading representation of fact that is likely to cause confusion, to cause  
8 mistake or to deceive regarding the origin, sponsorship, or approval of Dogge's goods  
9 and services or falsely to imply a connection, affiliation, endorsement, or association  
10 with Teller or Penn & Teller;  
11 4. Unfairly competing with Teller or Penn & Teller in any manner whatsoever; and  
12 5. Causing likelihood of confusion or further injuring Teller's business reputation.

13 IT IS FURTHER ORDERED this court shall retain jurisdiction of this case for the  
14 purpose of enforcing this judgment.

15 DATED September 30, 2014.

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17 UNITED STATES DISTRICT JUDGE  
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